

APPENDIX W – STANDARD PROVISIONS FOR WEBSITE CONTRACTS

The Contractor providing website development and/or hosting services to the New York State Thruway Authority/New York State Canal Corporation (Authority/Corporation) pursuant to this Agreement must strictly adhere to the following provisions, which are incorporated by reference into this Agreement. (The word “Contractor” herein refers to any party and its agents, successors and assigns, other than the Authority/Corporation.)

I. GENERAL PROJECT MANAGEMENT RESPONSIBILITIES

Management of this website project shall be conducted as follows:

1. The Authority/Corporation’s Director of Public Affairs will assign one person to be the Authority/Corporation’s website project contact. All communications and correspondence from the Contractor regarding the development of the website must be directed to this person.
2. The Contractor will assign one person to be the Contractor’s project contact. The Authority/Corporation will direct its communications and correspondence regarding the development of the website to this person.
3. Prior to the start of any website development project, the Contractor must meet with the Authority/Corporation to develop specific project objectives and timetables for completion of the project.
4. The design, construction and documentation of the website must be approved by the Director of Public Affairs prior to the start of any website development.
5. The Contractor must maintain regular communication throughout the project with the Authority/Corporation. If requested by the Authority/Corporation, the Contractor must provide periodic written progress reports and be available upon reasonable notice at mutually convenient times for meetings.

II. WEBSITE DESIGN AND PERFORMANCE

A. Design and Content Requirements. The Contractor must produce a website for the Authority/Corporation that complies with the following requirements:

1. Any web-based intranet and internet information and applications development, or programming delivered pursuant to this Agreement must comply with the New York State Office for Technology Policy P04-002, Accessibility of New York State Web-based Intranet and Internet Information and Applications, as such policy may be amended, modified or superseded, regarding the accessibility of web-based intranet and internet information and applications to persons with disabilities.

2. Satisfies all requirements of the New York State Office for Technology Cyber Security Policy P03-002, Information Security Policy, as such policy may be amended, modified or superseded.
3. Contains the Authority/Corporation's Internet Privacy Policy.
4. Utilizes small (fast loading) graphics.
5. Utilizes official logos only as supplied by the Authority/Corporation.
6. Utilizes other photos and graphic images (e.g. web palette GIF and JPEG images) only as approved by the Authority/Corporation.
7. Utilizes style sheets to reflect the "look and feel" of the Authority/Corporation's official websites. By attaching style sheets to structured documents on the Web (e.g. HTML), the presentation of documents will be consistent without sacrificing device-independence or adding new HTML tags for background color, text and link colors, and typestyle.
8. Utilizes a maximum of 800x600-screen resolution, unless otherwise required or approved by the Authority/Corporation.
9. Contains no spelling, grammatical or contextual errors.
10. Contains no advertisements, including logos or references to the Contractor, unless approved by the Authority/Corporation.
11. Contains no "metatags" or other buried material, unless required or approved by the Authority/Corporation.
12. Does not utilize HTML frames, unless required or approved by the Authority/Corporation.
13. Contains the New York State common Web banner, as required by the Authority/Corporation.
14. States how to contact the webmaster or entity responsible for the operation of the site.

B. Specifications for Home Page. The website will consist of a home page (the first page of the website) that can be reached by typing into a Web browser one or more Uniform Resource Locators (URLs) that the Authority/Corporation has registered for the website.

C. Performance. Users of the Authority/Corporation's websites include a broad range of the Internet population. Websites targeted towards the general population should be quick loading and should not require special software (plug-ins) to run. On average, each website page should load in 15 seconds or less with a 28.8 modem connection or comparable time with a different speed connection. The Contractor must:

1. Test website pages with many browsers and platforms. Because this technology is continuously changing, the Contractor must meet with the Authority/Corporation to determine which browser releases should be supported (e.g. Internet Explorer, Netscape Navigator, and Lynx) for any given Authority/Corporation website.
2. Verify that the website runs without errors and is free of malicious code, including, but not limited to, viruses, worms and trojans.

D. Accessibility of Website During Construction. The Contractor must make the website accessible to the Authority/Corporation throughout the construction of the prototype and the final website. The Contractor must use its best efforts to ensure that, until final acceptance and approval by the Authority/Corporation, the website is not accessible to anyone other than authorized representatives of the Authority/Corporation. The Contractor must not under any circumstances publish or otherwise disseminate website content developed pursuant to this Agreement without first obtaining the approval of the Authority/Corporation.

E. Submission to Index Sites. The Contractor shall register the URLs of the website with Alta Vista, Lycos, Google, Yahoo and Excite search engines and any other comparable entities as requested by the Authority/Corporation.

F. Submission of Deliverables. Upon the Authority/Corporation's acceptance testing and approval of the final website, or upon termination of this Agreement, whichever occurs earlier, the Contractor must submit all Deliverables to the Authority/Corporation including all changes or additions (enhancements) made thereto along with all items provided by the Authority/Corporation as they existed as of the date of termination. Deliverables means: 1) all drafts, working and final copies of code, documentation and other materials developed by the Contractor in the course of its performance under this Agreement; and 2) any other items necessary for the operation of the website with the exception of third-party operating system software, third-party networking software, Web Browsers, and hardware. For the purposes of this section, Deliverables may include, but are not limited to: a description of the functional and design specifications, user interface requirements, operational flowcharts, software descriptions, training materials and documentation, network accessibility information, interactive elements, information-capturing capabilities, browser and platform compatibilities, electronic commerce requirements, audio/video format requirements, linking structures, database structure requirements, code standards, screen and file layouts, and general "look and feel" elements.

The Contractor must submit all code in an electronic format and all documentation and other materials in an electronic and printed format as prescribed and approved by the Authority/Corporation.

III. WEB SITE HOSTING

If this Agreement requires that the Contractor maintain the website on its Web server, and make maintenance modifications to the website from time to time in accordance with the Authority/Corporation's directions, the provisions of this Article shall apply to the Contractor's performance under this Agreement.

A. Server Hosting. The Contractor must make the website available to Internet users 24 hours per day, seven (7) days per week. The Contractor must back-up the website at least once every two weeks, and store said back-up materials in a safe and secure environment not located at the same location as the Contractor's Web server. The Contractor agrees to use its best efforts to ensure reasonable response times for users accessing the Web to the website; a website page should load, on average, in no more than 15 seconds with a 28.8 modem connection or comparable time with a different modem speed connection. After the Authority/Corporation approves the final website and any modification thereof, the Contractor must not make any changes to the website unless the Authority/Corporation approves such changes.

B. Security. The Contractor must supply to the Authority/Corporation a copy of the procedures used to identify system vulnerabilities and apply software patches and fixes. Further, the Contractor must provide to the Authority/Corporation a copy of the security policy in place for the systems and equipment that will be hosting the Authority/Corporation website, which security policy must, at a minimum, meet the following requirements:

1. Apply software patches and fixes to the Web-hosting equipment as soon as tested and accepted in the user community.
2. Test application and server software to verify that all sample code has been removed.
3. Verify that open ports are legitimate and identify the services that are using those ports.
4. Implement a file integrity system to ensure that file changes are authorized.
5. Provide a copy of incident response procedures to determine how the Contractor identifies malicious activity and recovers promptly from an attack.

C. Security Incident and Resolution Reporting. Upon discovering that the confidentiality, integrity or availability of the Web server or the website's information resources is threatened or compromised, the Contractor must report the security incident to the Authority/Corporation. For purposes of this section the following events are considered security incidents:

1. Unauthorized access that is either successful or unusually persistent.

2. Instances of any malicious code that either has a widespread impact throughout the Contractor's organizational Web environment or has specifically affected the Authority/Corporation's Web server or website.
3. Denial of service attack that is either successful and adversely affects website access or is unusually persistent.
4. Scans and probes that precede or are related to a security incident listed above.
5. The Contractor shall contact the Authority/Corporation via telephone and supply the following information when initially reporting the discovery of a security incident:
 - a. Name, phone/pager/cell number and e-mail address of the individual making the report.
 - b. Type of security incident(s) – unauthorized access, malicious code, denial of service, probes, scans and/or other suspected activity that could result in a significant adverse impact.
 - c. Location of affected system – street address, floor/room number and city/state.
 - d. Detailed description of the security incident.
 - e. Date and time the security incident occurred.
 - f. Date and time the security incident was detected.
 - g. How the security incident was detected.
 - h. Business impact/criticality of the security incident.
 - i. Other relevant information.
6. The Contractor shall contact the Authority/Corporation via telephone and supply the following information upon investigation and resolution of the security incident.
 - a. Systems affected – OS, software, release level, etc.
 - b. Specific nature of account or information resource access/compromise.
 - c. Attack source details – source IP address, attack method, vulnerability exploited, etc.
 - d. Actions taken to isolate/contain, investigate and remediate the security incident.

- e. Planned follow-up activities.
- f. Overall impact of the service outage.
- g. Resources required to resolve the incident - staff or consultant time, new server, etc.

D. Transference and Back-Up. Upon the Authority/Corporation's request at any time, or in the event of the Authority/Corporation's termination of this Agreement, Contractor agrees to electronically transfer to the Authority/Corporation a complete copy of the current website, including all elements, drafts and working copies. In the event such transfer is a result of the Authority/Corporation's termination of its use of the Contractor's Web server as the host for the website, the Contractor must maintain one complete electronic version of the website, including all code related thereto (and must "delete" all other versions thereof off of its computers and media, including back-up copies), until the Authority/Corporation informs the Contractor in writing that the transferred files appear to be complete, at which time the Contractor must "delete" its final copy of the website off of its computers and media.

E. Transaction Logging. During the time that the website is located on the Contractor's server, the Contractor must, free of charge, provide the Authority/Corporation with access to all log files for the website. In addition, on a monthly basis at no charge to the Authority/Corporation, the Contractor must provide in a mutually agreeable electronic form a complete transaction log history containing the date, time, source IP address, and file, graphic, or other material accessed for each Web page accessed during the preceding month.

IV. CONFIDENTIALITY

A. Duty to Maintain Confidentiality and Restrict Access. The Contractor must keep all work performed, and all Authority/Corporation information gathered to perform work under this Agreement, confidential and shall not disclose any such information or work to any third party without the prior written consent of the Authority/Corporation. Except for such staff members designated as "need-to-know" and expressly authorized by the Contractor to have access to the Authority/Corporation's information, the Contractor must take all appropriate and necessary measures to ensure that no other person or entity has access to the information. The Authority/Corporation reserves the right to inspect the Contractor's facilities, without prior notice, to ascertain whether or not the Contractor is adhering to the confidentiality provisions of this Agreement.

B. Duty to Advise All Employees. The Contractor must advise its entire staff, including permanent and temporary employees, involved in providing services pursuant to this Agreement of the confidentiality requirements hereunder and the Contractor must ensure that such employees adhere to such requirements.

C. Survivability. The provisions of this Article shall survive termination or expiration of this Agreement.

V. OWNERSHIP AND RIGHTS

- A. Ownership of Work Product.** Except as set forth in Section C of this Article: (1) the Contractor hereby assigns, transfers and sets over to the Authority/Corporation all of the right, title and interest for the entire world in and to all elements of the Deliverables and the copyright therein; and (2) the Authority/Corporation shall exclusively own all United States and international copyrights and all other intellectual property rights in the Deliverables.
- B. Vesting of Rights.** With the sole exception of any preexisting works identified in Section C of this Article, upon creation of each element of each Deliverable the Contractor shall automatically assign to the Authority/Corporation ownership of all United States and international copyrights and all other intellectual property rights in each element of the Deliverable. From time to time, upon the Authority/Corporation's request, the Contractor and/or its personnel must confirm such assignments by execution and delivery of an assignment or other written instruments as the Authority/Corporation may request. The Authority/Corporation shall have the right to obtain and hold in its own name all copyright registrations and other evidence of rights that may be available for the Deliverables and any portion(s) thereof.
- C. Preexisting Works.** In the event that any portion of the Deliverables will constitute a preexisting work for which the Contractor cannot grant to the Authority/Corporation the rights set forth in sections (A) and (B) of this Article, before commencing work, the Contractor must provide written notification to the Authority/Corporation of: (1) the nature of such preexisting work; (2) its owner; (3) any restrictions or royalty terms applicable to the Contractor's or the Authority/Corporation's use of such preexisting work or the Authority/Corporation's exploitation of the Deliverables as a derivative work thereof; and (4) the source of the Contractor's authority to employ the preexisting work in the preparation of the Deliverables. Preexisting works, either so notified in advance by the Contractor or otherwise coming to the attention of the Authority/Corporation, may be used in the construction of the Deliverables only if expressly approved in writing by the Authority/Corporation prior to their use, which approval shall be within the sole discretion of the Authority/Corporation. The Contractor hereby grants to the Authority/Corporation a non-exclusive, royalty free, irrevocable license to use, copy, transmit, perform, and modify the preexisting works relative to the operation of the website.

VI. REPRESENTATIONS AND WARRANTIES

The Contractor makes the following representations and warranties for the benefit of the Authority/Corporation:

- A. Ownership Rights.** The Contractor represents and warrants that: (1) it is and will be the sole author of all works it employs in preparing any and all Deliverables other than preexisting works; (2) it has and will have full and sufficient right to assign or grant the rights and/or licenses granted in the Deliverables and any

preexisting works pursuant to this Agreement; (3) all elements of the Deliverables other than preexisting works have not been and will not be published under circumstances that would cause a loss of copyright therein; and (4) all elements of the Deliverables, including all preexisting works, do not and will not infringe any patents, copyrights, trademarks or other intellectual property rights (including trade secrets), privacy, or similar rights of any person or entity, nor has any claim (whether or not embodied in an action, past or present) of such infringement been threatened or asserted, nor is such a claim pending against the Contractor or, insofar as the Contractor is aware, against any entity from which the Contractor has obtained such rights.

B. Conformity, Performance, and Compliance. The Contractor represents and warrants that all work will be performed in a competent and professional manner consistent with generally accepted industry standards, that no conflict of interest exists or will arise with respect to the performance by the Contractor of all work contemplated by this Agreement and that all elements of the Deliverables will conform to the specifications and functions set forth in this Agreement. The Contractor will repair free of charge any Deliverable that does not meet this warranty within a reasonable period of time.